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AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (S) No. 4041 of 2007

PETITIONER : Muktipad Ghoshal S/o Late Shri B.N.Ghoshal, Aged – 62 years, Ret. Assistant Engineer Water Resources Deptt., R/o J-B Parijat Colony, Nehru Nagar, Bilaspur (C.G.)

VERSUS

RESPONDENTS : 1. State of Chhattisgarh Through the Principal Secretary Water Resources Department D.K.S. Bhawan, Raipur (C.G.)
2. Engineer-in-Chief Water Resources Department, Govt. of Chhattisgarh, Raipur (C.G.)
3. Chief Engineer, Minimata Hasdeo Bango Project, Bilaspur (C.G.)

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

Single Bench : Hon'ble Justice Shri Satish K. Agnihotri.

Present: Shri P.K.Bhaduri, Advocate for the petitioner.
Shri Y.S.Thakur, Govt. Advocate for the State/respondents.

ORDER
(Passed on 12th day of July, 2007)

1. By this petition, the petitioner seeks relief of grant of higher grade of pay-scale/Kramonnati from the year 1999 with all arrears and interest till the date of his retirement.

2. The indisputable facts, in brief, are that the petitioner was appointed as Overseer/Sub-Engineer in the Water Resources Department on 09.08.1966. Thereafter, by order dated 05.10.1983, the petitioner was promoted to the post of Assistant Engineer. The petitioner, thereafter continued to work as Assistant Engineer till the date of his retirement i.e. 31.05.2005.

3. After retirement, the petitioner has filed this petition on 09.07.2007 claiming for the relief of Kramonnati / higher grade of pay-scale w.e.f the year 1999. According to the learned counsel appearing for the petitioner,

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as per circular dated 17th March, 1999 (Annexure P/1), the petitioner was entitled to be granted higher grade of pay-scale after completion of 24 years of service as he was not granted more than one promotion during his life time. Learned counsel relies on clause 2(b) of the circular for the purpose of grant of higher grade of pay-scale/Kramonnati.

4. According to the learned counsel, the petitioner completed 12 years of service in the year 1978. Thereafter, the petitioner was promoted on 15.10.1983. The petitioner completed 24 years of service from the first date of joining with only one promotion in his service career. Learned counsel further submits that the other similarly situated employees have been granted higher grade of pay-scale from the year 1999. Thus, the petitioner is entitled to grant of fixation of higher grade of pay scale and revision of pension.

5. As per the petitioner's own submission, the petitioner became entitled for grant of higher grade of pay-scale much before the year 1999 but the cause of action arose in the year 1999 when the other similarly situated employees were granted higher grade of pay scale.

6. The petitioner has retired from service w.e.f 31.05.2005. The petitioner has neither raised any grievance nor filed any petition before the date of his retirement except certain representations, which were made to the concerned authorities. Filing more than one representation cannot arrest the limitation. It is well settled that if one representation is not replied to, the aggrieved person may approach the Court within a reasonable time. In the case on hand, the petitioner made his first representation after a period of three years i.e. in September, 2002 (Annexure P/2), thereafter May, 2003 (Annexure P/3) and March 2006 (Annexure P/4).

7. The relation of the employer and the employee subsists during the period of service, not thereafter. The petitioner ought to have raised his grievance in the year 1999 itself, or when he was in service, before this Court. After retirement, the petitioner again waited for two years to file this petition. Thus, this petition is not maintainable in view of the fact that the petitioner has slept over his right for a sufficiently long time without explaining unreasonable and inordinate delay of eight years.

8. This petition has been filed after a long inordinate and unexplained delay of over 8 years. The petitioner has not been able to produce or submit any reason for condonation of such a long delay in filing this petition.

9. It is well settled that High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic as the belated approach may have the effect of inflicting not only hardship as inconvenience but also injustice on third parties.

10. The Supreme Court in **Jagdish Narain Maltiar Vs. The State of Bihar & others**[1] observed as under:

> "Thus it was in August, 1963 that the appellant discovered that his services were really determined for gross misconduct. For nearly 3 years thereafter he kept on submitting one memorandum after another to the Government and it was not until late in 1966 that he filed a Writ Petition in the High Court to challenge the order of removal. The memorials presented by him to the Government were in the nature of mercy petitions and he should have realized that in pursuing a remedy which was not duly appointed under the law he was putting in peril a right of high value and significance. By his conduct he disabled the High Court from exercising its extraordinary powers in his favour. We are therefore of the opinion that the High Court was justified in refusing to entertain the petition."

11. The Supreme Court in **P.S. Sadasivaswamy Vs. State of Tamil Nadu**[2] observed as under:

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[1] AIR 1973 SC 1343
[2] AIR 1974 SC 2271

"It is not that there is any period of limitation for the Courts to exercise their powers under Article 226, nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters."

12. The Supreme Court in **State of M.P. & others Vs. Nandlal Jaiswal and others**[3] further observed as under:

"Now, it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction. We do not think it necessary to burden this judgment with reference to various decisions of this Court where it has been emphasized time and again that where there is inordinate and unexplained delay and third party rights are created in the intervening period, the High Court would decline to interfere, even if the State action complained of is unconstitutional or illegal."

13. The Supreme Court in **Burn Standard Co. Ltd. & others Vs. Dinabandhu Majumdar & another**[4] also observed as under:

"The very conduct of non-raising of an objection in the matter by the employee, in our view, should be a sufficient reason for the

[3] (1986) 4 SCC 566
[4] (1995) 4 SCC 172

> High Court, not to entertain such applications on grounds of acquiescence, undue delay and laches."

14. The Supreme Court in **Karnataka Power Corporation Ltd. through its Chairman & Managing Director & another Vs. K. Thangappan & another**[5] observed as under:

> "Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in Durga Prasad V. Chief Controller of Imports and Exports. Of course, the discretion has to be exercised judicially and reasonably."

15. In the present cases, the cause of action arose in the year 1999, when the other similarly situated employees were granted the benefit of higher grade of pay scale. The petitioner has not taken any steps ever since till this petition was filed on 09.07.2007 and remained tardy and indolent. This belated approach would certainly cause hardship and inconvenience to other side.

16. As a result and for the aforesaid reasons, the writ petition is dismissed as not maintainable on the ground of delay in approaching this Court.

Sd/-
Satish K. Agnihotri
Judge

Amit

[5] (2006) 4 SCC 322